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HOUSE BILL 2858

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Morrell, Warnick, Campbell, Hurst, Newhouse,  
O'Brien, Green, Kelley, and Conway

Read first time 01/17/08. Referred to Committee on Public Safety &  
Emergency Preparedness.

1            AN ACT Relating to expanding metal property provisions; amending  
2 RCW 19.290.010, 19.290.020, 19.290.030, 19.290.040, 19.290.050,  
3 19.290.060, 19.290.070, and 9.94A.535; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 19.290.010 and 2007 c 377 s 1 are each amended to read  
6 as follows:

7            The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9            (1) "Commercial account" means a relationship between a scrap metal  
10 business and a commercial enterprise that is ongoing and properly  
11 documented under RCW 19.290.030.

12            (2) "Commercial enterprise" means a corporation, partnership,  
13 limited liability company, association, state agency, political  
14 subdivision of the state, public corporation, or any other legal or  
15 commercial entity.

16            (3) "Commercial metal property" means: Utility access covers;  
17 street light poles and fixtures; road and bridge guardrails; highway or  
18 street signs; water meter covers; traffic directional and control  
19 signs; traffic light signals; any metal property marked with the name

1 of a commercial enterprise, including but not limited to a telephone,  
2 commercial mobile radio services, cable, electric, water, natural gas,  
3 or other utility, or railroad; unused or undamaged building  
4 construction materials consisting of copper pipe, tubing, or wiring, or  
5 aluminum wire, siding, downspouts, or gutters; aluminum or stainless  
6 steel fence panels made from one inch tubing, forty-two inches high  
7 with four-inch gaps; aluminum decking, bleachers, or risers; historical  
8 markers; statue plaques; grave markers and funeral vases; or  
9 agricultural irrigation wheels, sprinkler heads, and pipes.

10 (4) "Nonferrous metal property" means metal property for which the  
11 value of the metal property is derived from the property's content of  
12 copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.  
13 "Nonferrous metal property" does not include precious metals.

14 (5) "Precious metals" means gold, silver, and platinum.

15 (6) "Private metal property" means catalytic converters.

16 (7) "Record" means a paper, electronic, or other method of storing  
17 information.

18 ((+7)) (8) "Scrap metal business" means a scrap metal supplier,  
19 scrap metal recycling center, and scrap metal processor.

20 ((+8)) (9) "Scrap metal processor" means a person with a current  
21 business license that conducts business from a permanent location, that  
22 is engaged in the business of purchasing or receiving private metal  
23 property, nonferrous metal property, and commercial metal property for  
24 the purpose of altering the metal in preparation for its use as  
25 feedstock in the manufacture of new products, and that maintains a  
26 hydraulic bailer, shearing device, or shredding device for recycling.

27 ((+9)) (10) "Scrap metal recycling center" means a person with a  
28 current business license that is engaged in the business of purchasing  
29 or receiving private metal property, nonferrous metal property, and  
30 commercial metal property for the purpose of aggregation and sale to  
31 another scrap metal business and that maintains a fixed place of  
32 business within the state.

33 ((+10)) (11) "Scrap metal supplier" means a person with a current  
34 business license that is engaged in the business of purchasing or  
35 receiving private metal property or nonferrous metal property for the  
36 purpose of aggregation and sale to a scrap metal recycling center or  
37 scrap metal processor and that does not maintain a fixed business  
38 location in the state.

1        (~~(11)~~) (12) "Transaction" means a pledge, or the purchase of, or  
2 the trade of any item of private metal property or nonferrous metal  
3 property by a scrap metal business from a member of the general public.  
4 "Transaction" does not include donations or the purchase or receipt of  
5 private metal property or nonferrous metal property by a scrap metal  
6 business from a commercial enterprise, from another scrap metal  
7 business, or from a duly authorized employee or agent of the commercial  
8 enterprise or scrap metal business.

9        **Sec. 2.** RCW 19.290.020 and 2007 c 377 s 2 are each amended to read  
10 as follows:

11        (1) At the time of a transaction, every scrap metal business doing  
12 business in this state shall produce wherever that business is  
13 conducted an accurate and legible record of each transaction involving  
14 private metal property or nonferrous metal property. This record must  
15 be written in the English language, documented on a standardized form  
16 or in electronic form, and contain the following information:

17        (a) The signature of the person with whom the transaction is made;

18        (b) The time, date, location, and value of the transaction;

19        (c) The name of the employee representing the scrap metal business  
20 in the transaction;

21        (d) The name, street address, and telephone number of the person  
22 with whom the transaction is made;

23        (e) The license plate number and state of issuance of the license  
24 plate on the motor vehicle used to deliver the private metal property  
25 or nonferrous metal property subject to the transaction;

26        (f) A description of the motor vehicle used to deliver the private  
27 metal property or nonferrous metal property subject to the transaction;

28        (g) The current driver's license number or other government-issued  
29 picture identification card number of the seller or a copy of the  
30 seller's government-issued picture identification card; and

31        (h) A description of the predominant types of private metal  
32 property or nonferrous metal property subject to the transaction,  
33 including the property's classification code as provided in the  
34 institute of scrap recycling industries scrap specifications circular,  
35 2006, and weight, quantity, or volume.

36        (2) For every transaction that involves private metal property or  
37 nonferrous metal property, every scrap metal business doing business in

1 the state shall require the person with whom a transaction is being  
2 made to sign a declaration. The declaration may be included as part of  
3 the transactional record required under subsection (1) of this section,  
4 or on a receipt for the transaction. The declaration must state  
5 substantially the following:

6 "I, the undersigned, affirm under penalty of law that the property  
7 that is subject to this transaction is not to the best of my knowledge  
8 stolen property."

9 The declaration must be signed and dated by the person with whom  
10 the transaction is being made. An employee of the scrap metal business  
11 must witness the signing and dating of the declaration and sign the  
12 declaration accordingly before any transaction may be consummated.

13 (3) The record and declaration required under this section must be  
14 open to the inspection of any commissioned law enforcement officer of  
15 the state or any of its political subdivisions at all times during the  
16 ordinary hours of business, or at reasonable times if ordinary hours of  
17 business are not kept, and must be maintained wherever that business is  
18 conducted for one year following the date of the transaction.

19 **Sec. 3.** RCW 19.290.030 and 2007 c 377 s 3 are each amended to read  
20 as follows:

21 (1) No scrap metal business may enter into a transaction to  
22 purchase or receive private metal property or nonferrous metal property  
23 from any person who cannot produce at least one piece of current  
24 government-issued picture identification, including a valid driver's  
25 license or identification card issued by any state.

26 (2) No scrap metal business may purchase or receive private metal  
27 property or commercial metal property unless the seller: (a) Has a  
28 commercial account with the scrap metal business; (b) can prove  
29 ownership of the property by producing written documentation that the  
30 seller is the owner of the property; or (c) can produce written  
31 documentation that the seller is an employee or agent authorized to  
32 sell the property on behalf of a commercial enterprise.

33 (3) No scrap metal business may enter into a transaction to  
34 purchase or receive metallic wire that was burned in whole or in part  
35 to remove insulation unless the seller can produce written proof to the  
36 scrap metal business that the wire was lawfully burned.

1 (4) No transaction involving private metal property or nonferrous  
2 metal property valued at greater than thirty dollars may be made in  
3 cash or with any person who does not provide a street address under the  
4 requirements of RCW 19.290.020. For transactions valued at greater  
5 than thirty dollars, the person with whom the transaction is being made  
6 may only be paid by a nontransferable check, mailed by the scrap metal  
7 business to a street address provided under RCW 19.290.020, no earlier  
8 than ten days after the transaction was made. A transaction occurs on  
9 the date provided in the record required under RCW 19.290.020.

10 (5) No scrap metal business may purchase or receive beer kegs from  
11 anyone except a manufacturer of beer kegs or licensed brewery.

12 **Sec. 4.** RCW 19.290.040 and 2007 c 377 s 4 are each amended to read  
13 as follows:

14 (1) Every scrap metal business must create and maintain a permanent  
15 record with a commercial enterprise, including another scrap metal  
16 business, in order to establish a commercial account. That record, at  
17 a minimum, must include the following information:

18 (a) The full name of the commercial enterprise or commercial  
19 account;

20 (b) The business address and telephone number of the commercial  
21 enterprise or commercial account; and

22 (c) The full name of the person employed by the commercial  
23 enterprise who is authorized to deliver private metal property,  
24 nonferrous metal property, and commercial metal property to the scrap  
25 metal business.

26 (2) The record maintained by a scrap metal business for a  
27 commercial account must document every purchase or receipt of private  
28 metal property, nonferrous metal property, and commercial metal  
29 property from the commercial enterprise. The documentation must  
30 include, at a minimum, the following information:

31 (a) The time, date, and value of the property being purchased or  
32 received;

33 (b) A description of the predominant types of property being  
34 purchased or received; and

35 (c) The signature of the person delivering the property to the  
36 scrap metal business.

1       **Sec. 5.** RCW 19.290.050 and 2007 c 377 s 5 are each amended to read  
2 as follows:

3       (1) Upon request by any commissioned law enforcement officer of the  
4 state or any of its political subdivisions, every scrap metal business  
5 shall furnish a full, true, and correct transcript of the records from  
6 the purchase or receipt of private metal property, nonferrous metal  
7 property, and commercial metal property involving a specific  
8 individual, vehicle, or item of private metal property, nonferrous  
9 metal property, or commercial metal property. This information may be  
10 transmitted within a specified time of not less than two business days  
11 to the applicable law enforcement agency electronically, by facsimile  
12 transmission, or by modem or similar device, or by delivery of computer  
13 disk subject to the requirements of, and approval by, the chief of  
14 police or the county's chief law enforcement officer.

15       (2) If the scrap metal business has good cause to believe that any  
16 private metal property, nonferrous metal property, or commercial metal  
17 property in his or her possession has been previously lost or stolen,  
18 the scrap metal business shall promptly report that fact to the  
19 applicable commissioned law enforcement officer of the state, the chief  
20 of police, or the county's chief law enforcement officer, together with  
21 the name of the owner, if known, and the date when and the name of the  
22 person from whom it was received.

23       **Sec. 6.** RCW 19.290.060 and 2007 c 377 s 6 are each amended to read  
24 as follows:

25       (1) Following notification, either verbally or in writing, from a  
26 commissioned law enforcement officer of the state or any of its  
27 political subdivisions that an item of private metal property,  
28 nonferrous metal property, or commercial metal property has been  
29 reported as stolen, a scrap metal business shall hold that property  
30 intact and safe from alteration, damage, or commingling, and shall  
31 place an identifying tag or other suitable identification upon the  
32 property. The scrap metal business shall hold the property for a  
33 period of time as directed by the applicable law enforcement agency up  
34 to a maximum of ten business days.

35       (2) A commissioned law enforcement officer of the state or any of  
36 its political subdivisions shall not place on hold any item of private  
37 metal property, nonferrous metal property, or commercial metal property

1 unless that law enforcement agency reasonably suspects that the  
2 property is a lost or stolen item. Any hold that is placed on the  
3 property must be removed within ten business days after the property on  
4 hold is determined not to be stolen or lost and the property must be  
5 returned to the owner or released.

6 **Sec. 7.** RCW 19.290.070 and 2007 c 377 s 7 are each amended to read  
7 as follows:

8 It is a gross misdemeanor under chapter 9A.20 RCW for:

9 (1) Any person to deliberately remove, alter, or obliterate any  
10 manufacturer's make, model, or serial number, personal identification  
11 number, or identifying marks engraved or etched upon an item of private  
12 metal property, nonferrous metal property, or commercial metal property  
13 in order to deceive a scrap metal business;

14 (2) Any scrap metal business to enter into a transaction to  
15 purchase or receive any private metal property, nonferrous metal  
16 property, or commercial metal property where the manufacturer's make,  
17 model, or serial number, personal identification number, or identifying  
18 marks engraved or etched upon the property have been deliberately and  
19 conspicuously removed, altered, or obliterated;

20 (3) Any person to knowingly make, cause, or allow to be made any  
21 false entry or misstatement of any material matter in any book, record,  
22 or writing required to be kept under this chapter;

23 (4) Any scrap metal business to enter into a transaction to  
24 purchase or receive private metal property, nonferrous metal property,  
25 or commercial metal property from any person under the age of eighteen  
26 years or any person who is discernibly under the influence of  
27 intoxicating liquor or drugs;

28 (5) Any scrap metal business to enter into a transaction to  
29 purchase or receive private metal property, nonferrous metal property,  
30 or commercial metal property with anyone whom the scrap metal business  
31 has been informed by a law enforcement agency to have been convicted of  
32 a crime involving drugs, burglary, robbery, theft, or possession of or  
33 receiving stolen property, manufacturing, delivering, or possessing  
34 with intent to deliver methamphetamine, or possession of ephedrine or  
35 any of its salts or isomers or salts of isomers, pseudoephedrine or any  
36 of its salts or isomers or salts of isomers, or anhydrous ammonia with

1 intent to manufacture methamphetamine within the past ten years whether  
2 the person is acting in his or her own behalf or as the agent of  
3 another;

4 (6) Any person to sign the declaration required under RCW  
5 19.290.020 knowing that the private metal property or nonferrous metal  
6 property subject to the transaction is stolen. The signature of a  
7 person on the declaration required under RCW 19.290.020 constitutes  
8 evidence of intent to defraud a scrap metal business if that person is  
9 found to have known that the private metal property or nonferrous metal  
10 property subject to the transaction was stolen;

11 (7) Any scrap metal business to possess private metal property or  
12 commercial metal property that was not lawfully purchased or received  
13 under the requirements of this chapter; or

14 (8) Any scrap metal business to engage in a series of transactions  
15 valued at less than thirty dollars with the same seller for the  
16 purposes of avoiding the requirements of RCW 19.290.030(4).

17 **Sec. 8.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to read  
18 as follows:

19 The court may impose a sentence outside the standard sentence range  
20 for an offense if it finds, considering the purpose of this chapter,  
21 that there are substantial and compelling reasons justifying an  
22 exceptional sentence. Facts supporting aggravated sentences, other  
23 than the fact of a prior conviction, shall be determined pursuant to  
24 the provisions of RCW 9.94A.537.

25 Whenever a sentence outside the standard sentence range is imposed,  
26 the court shall set forth the reasons for its decision in written  
27 findings of fact and conclusions of law. A sentence outside the  
28 standard sentence range shall be a determinate sentence.

29 If the sentencing court finds that an exceptional sentence outside  
30 the standard sentence range should be imposed, the sentence is subject  
31 to review only as provided for in RCW 9.94A.585(4).

32 A departure from the standards in RCW 9.94A.589 (1) and (2)  
33 governing whether sentences are to be served consecutively or  
34 concurrently is an exceptional sentence subject to the limitations in  
35 this section, and may be appealed by the offender or the state as set  
36 forth in RCW 9.94A.585 (2) through (6).

37 (1) Mitigating Circumstances - Court to Consider

1 The court may impose an exceptional sentence below the standard  
2 range if it finds that mitigating circumstances are established by a  
3 preponderance of the evidence. The following are illustrative only and  
4 are not intended to be exclusive reasons for exceptional sentences.

5 (a) To a significant degree, the victim was an initiator, willing  
6 participant, aggressor, or provoker of the incident.

7 (b) Before detection, the defendant compensated, or made a good  
8 faith effort to compensate, the victim of the criminal conduct for any  
9 damage or injury sustained.

10 (c) The defendant committed the crime under duress, coercion,  
11 threat, or compulsion insufficient to constitute a complete defense but  
12 which significantly affected his or her conduct.

13 (d) The defendant, with no apparent predisposition to do so, was  
14 induced by others to participate in the crime.

15 (e) The defendant's capacity to appreciate the wrongfulness of his  
16 or her conduct, or to conform his or her conduct to the requirements of  
17 the law, was significantly impaired. Voluntary use of drugs or alcohol  
18 is excluded.

19 (f) The offense was principally accomplished by another person and  
20 the defendant manifested extreme caution or sincere concern for the  
21 safety or well-being of the victim.

22 (g) The operation of the multiple offense policy of RCW 9.94A.589  
23 results in a presumptive sentence that is clearly excessive in light of  
24 the purpose of this chapter, as expressed in RCW 9.94A.010.

25 (h) The defendant or the defendant's children suffered a continuing  
26 pattern of physical or sexual abuse by the victim of the offense and  
27 the offense is a response to that abuse.

28 (2) Aggravating Circumstances - Considered and Imposed by the Court  
29 The trial court may impose an aggravated exceptional sentence  
30 without a finding of fact by a jury under the following circumstances:

31 (a) The defendant and the state both stipulate that justice is best  
32 served by the imposition of an exceptional sentence outside the  
33 standard range, and the court finds the exceptional sentence to be  
34 consistent with and in furtherance of the interests of justice and the  
35 purposes of the sentencing reform act.

36 (b) The defendant's prior unscored misdemeanor or prior unscored  
37 foreign criminal history results in a presumptive sentence that is

1 clearly too lenient in light of the purpose of this chapter, as  
2 expressed in RCW 9.94A.010.

3 (c) The defendant has committed multiple current offenses and the  
4 defendant's high offender score results in some of the current offenses  
5 going unpunished.

6 (d) The failure to consider the defendant's prior criminal history  
7 which was omitted from the offender score calculation pursuant to RCW  
8 9.94A.525 results in a presumptive sentence that is clearly too  
9 lenient.

10 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
11 the Court

12 Except for circumstances listed in subsection (2) of this section,  
13 the following circumstances are an exclusive list of factors that can  
14 support a sentence above the standard range. Such facts should be  
15 determined by procedures specified in RCW 9.94A.537.

16 (a) The defendant's conduct during the commission of the current  
17 offense manifested deliberate cruelty to the victim.

18 (b) The defendant knew or should have known that the victim of the  
19 current offense was particularly vulnerable or incapable of resistance.

20 (c) The current offense was a violent offense, and the defendant  
21 knew that the victim of the current offense was pregnant.

22 (d) The current offense was a major economic offense or series of  
23 offenses, so identified by a consideration of any of the following  
24 factors:

25 (i) The current offense involved multiple victims or multiple  
26 incidents per victim;

27 (ii) The current offense involved attempted or actual monetary loss  
28 substantially greater than typical for the offense;

29 (iii) The current offense involved a high degree of sophistication  
30 or planning or occurred over a lengthy period of time; or

31 (iv) The defendant used his or her position of trust, confidence,  
32 or fiduciary responsibility to facilitate the commission of the current  
33 offense.

34 (e) The current offense was a major violation of the Uniform  
35 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
36 trafficking in controlled substances, which was more onerous than the  
37 typical offense of its statutory definition: The presence of ANY of  
38 the following may identify a current offense as a major VUCSA:

1 (i) The current offense involved at least three separate  
2 transactions in which controlled substances were sold, transferred, or  
3 possessed with intent to do so;

4 (ii) The current offense involved an attempted or actual sale or  
5 transfer of controlled substances in quantities substantially larger  
6 than for personal use;

7 (iii) The current offense involved the manufacture of controlled  
8 substances for use by other parties;

9 (iv) The circumstances of the current offense reveal the offender  
10 to have occupied a high position in the drug distribution hierarchy;

11 (v) The current offense involved a high degree of sophistication or  
12 planning, occurred over a lengthy period of time, or involved a broad  
13 geographic area of disbursement; or

14 (vi) The offender used his or her position or status to facilitate  
15 the commission of the current offense, including positions of trust,  
16 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
17 other medical professional).

18 (f) The current offense included a finding of sexual motivation  
19 pursuant to RCW 9.94A.835.

20 (g) The offense was part of an ongoing pattern of sexual abuse of  
21 the same victim under the age of eighteen years manifested by multiple  
22 incidents over a prolonged period of time.

23 (h) The current offense involved domestic violence, as defined in  
24 RCW 10.99.020, and one or more of the following was present:

25 (i) The offense was part of an ongoing pattern of psychological,  
26 physical, or sexual abuse of the victim manifested by multiple  
27 incidents over a prolonged period of time;

28 (ii) The offense occurred within sight or sound of the victim's or  
29 the offender's minor children under the age of eighteen years; or

30 (iii) The offender's conduct during the commission of the current  
31 offense manifested deliberate cruelty or intimidation of the victim.

32 (i) The offense resulted in the pregnancy of a child victim of  
33 rape.

34 (j) The defendant knew that the victim of the current offense was  
35 a youth who was not residing with a legal custodian and the defendant  
36 established or promoted the relationship for the primary purpose of  
37 victimization.

1 (k) The offense was committed with the intent to obstruct or impair  
2 human or animal health care or agricultural or forestry research or  
3 commercial production.

4 (l) The current offense is trafficking in the first degree or  
5 trafficking in the second degree and any victim was a minor at the time  
6 of the offense.

7 (m) The offense involved a high degree of sophistication or  
8 planning.

9 (n) The defendant used his or her position of trust, confidence, or  
10 fiduciary responsibility to facilitate the commission of the current  
11 offense.

12 (o) The defendant committed a current sex offense, has a history of  
13 sex offenses, and is not amenable to treatment.

14 (p) The offense involved an invasion of the victim's privacy.

15 (q) The defendant demonstrated or displayed an egregious lack of  
16 remorse.

17 (r) The offense involved a destructive and foreseeable impact on  
18 persons other than the victim.

19 (s) The defendant committed the offense to obtain or maintain his  
20 or her membership or to advance his or her position in the hierarchy of  
21 an organization, association, or identifiable group.

22 (t) The defendant committed the current offense shortly after being  
23 released from incarceration.

24 (u) The current offense is a burglary and the victim of the  
25 burglary was present in the building or residence when the crime was  
26 committed.

27 (v) The offense was committed against a law enforcement officer who  
28 was performing his or her official duties at the time of the offense,  
29 the offender knew that the victim was a law enforcement officer, and  
30 the victim's status as a law enforcement officer is not an element of  
31 the offense.

32 (w) The defendant committed the offense against a victim who was  
33 acting as a good samaritan.

34 (x) The defendant committed the offense against a public official  
35 or officer of the court in retaliation of the public official's  
36 performance of his or her duty to the criminal justice system.

37 (y) The victim's injuries substantially exceed the level of bodily

1 harm necessary to satisfy the elements of the offense. This aggravator  
2 is not an exception to RCW 9.94A.530(2).

3 (z)(i)(A) The current offense is theft in the first degree, theft  
4 in the second degree, possession of stolen property in the first  
5 degree, or possession of stolen property in the second degree; (B) the  
6 stolen property involved is metal property; and (C) the property damage  
7 to the victim caused in the course of the theft of metal property is  
8 more than three times the value of the stolen metal property, or the  
9 theft of the metal property creates a public hazard.

10 (ii) For purposes of this subsection, "metal property" means  
11 commercial metal property, private metal property, or nonferrous metal  
12 property, as defined in RCW 19.290.010.

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